

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RYSTA LEONA SUSMAN, Both
individually and as Legal Guardian of
Shane Allen Loveland; and JACOB
SUMMERS

Plaintiff(s),

v.

THE GOODYEAR TIRE & RUBBER
COMPANY

Defendant(s).

CASE NO. 8:18CV127


**INDEX OF EXHIBITS TO PLAINTIFFS'
RESPONSE TO GOODYEAR'S
MOTION FOR PARTIAL
SUMMARY JUDGEMENT**

Exhibit	Description
1	Sworn Expert Report of David Southwell (filed under seal pursuant to Protective Order Doc. No 66)
2	Selected portions of the deposition of David Southwell

Respectfully submitted,

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CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on September 3, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

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**EXHIBIT 1
FILED UNDER SEAL**

**CONFIDENTIAL MATERIAL PROTECTED
BY COURT ORDER**

EXHIBIT 2

In the Matter of:

Rysta Leona Susman, et al.

vs.

The Goodyear Tire & Rubber Company

David Roy Southwell

March 28, 2019

epiq

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1 A. I will, yeah.

2 **Q. That's fine. Now, I want to take, first, kind**
3 **of a high-level broad view of what I glean from your**
4 **report in terms of your opinions. Okay?**

5 A. Uh-huh.

6 **Q. Break it down a little bit?**

7 A. Yes.

8 **Q. The first thing I note is that you state that**
9 **there are -- that "There exists 'extensive areas' of**
10 **harder and more brittle rubber in the belt skim coat and**
11 **other compounds that have been affected by thermal**
12 **oxidative degradation"?**

13 A. Yes.

14 **Q. Did I state that correctly?**

15 A. Yes, I think so.

16 **Q. And you specifically, then, point to design**
17 **measures which are, in your judgment, successful at**
18 **reducing thermal oxidative degradation, including the**
19 **inner liner compound formula?**

20 A. Yes.

21 **Q. Inner liner cured gauge?**

22 A. Yes.

23 **Q. And antioxidative additives to the skim coats**
24 **and the compounds?**

25 A. Yes.

14

1 **Q. All right. Is it your opinion to a reasonable**
2 **degree of engineering certainty that this tire, the tire**
3 **at issue in this case, was defective in design because of**
4 **the inner liner compound that was used?**

5 A. I can't be definitive about that because
6 Goodyear have not provided that information.

7 **Q. So the answer to that is, as of today, you are**
8 **unable to give that -- you do not have that opinion,**
9 **correct?**

10 A. Not specifically about the compound of the
11 liner. My opinion is that the design of the tire, which
12 incorporates the inner liner compound, the gauge and the
13 antioxidants, was inadequate and caused the tire to
14 oxidize. But I can't be specific about the compound
15 element of that because I don't have that information.

16 **Q. Okay. Same question with regard to the inner**
17 **liner cured gauge. Do you hold an opinion that this tire**
18 **was defective because of the cured gauge of the inner**
19 **liner that was on this tire?**

20 A. Well, again, the inner liner gauge is -- is
21 a -- an element or design parameter that can be changed
22 to change the rate at which the -- the skim coat
23 compounds will oxidize. But taking the gauge in
24 isolation is -- is in many ways meaningless. You have to
25 consider all of the factors that -- that affect

15

1 oxidation.

2 **Q. Well, whether it's meaningless or not, I**
3 **suppose can be debated. But my question is, looking at**
4 **the inner liner gauge alone in this tire, are you**
5 **testifying to a reasonable degree of engineering**
6 **certainty that the cured inner liner gauge was**
7 **unreasonably dangerous?**

8 A. Not specifically, no.

9 **Q. And are you testifying to a reasonable degree**
10 **of engineering certainty that the inner liner compound**
11 **that was used was unreasonably dangerous?**

12 A. Well, again, I can't be specific about that
13 because I don't have that information.

14 **Q. I'm -- I need to parcel this out, if you can,**
15 **whether it's -- I understand where -- where you're coming**
16 **from, but I need an answer to this question, whether you**
17 **can state to a reasonable -- reasonable degree of**
18 **engineering certainty that this liner compound was**
19 **defective and unreasonably dangerous.**

20 A. Again, I can't be specific about that --

21 **Q. All right.**

22 A. -- because that information has not been
23 provided by Goodyear.

24 **Q. Do you hold an opinion to a reasonable degree**
25 **of engineering certainty that this tire was defective and**

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1 **unreasonably dangerous because of the oxidative agents**
2 **that were used or not used in the skim coat and**
3 **compounds?**

4 A. Well, again, that information has not been
5 provided by Goodyear so I can't be definitive about that.

6 **Q. So the answer is, as of today, you do not hold**
7 **that opinion, correct?**

8 A. Well, I don't hold an opinion either way on
9 that because I don't have that level of detail.

10 **Q. Your report also contains an opinion that the**
11 **steel belts around the subject tire exhibit significant**
12 **lateral displacement around the tire, which increase the**
13 **overall durability load on the tire, making it more**
14 **susceptible to failure?**

15 A. Yes.

16 **Q. Okay. This, I assume, would be a manufacturing**
17 **defect opinion?**

18 A. Yes.

19 **Q. As opposed to the one we just discussed, that**
20 **would be a design-related issue, correct?**

21 A. Well, it could be both in the sense that if the
22 design allows for excessive lateral variation, then the
23 design is defective. If the design does not allow for
24 excessive lateral deviation in the location of the belts
25 and the belts exceed the specification, then, in my view,

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1 Q. Right. So my impression of your theory here
2 would be that because of the thermal oxidative
3 degradation in the belt skim coat that contributed to a
4 separation of the belt package at the belt edges, true?
5 A. Well, it's the skim coat and other rubber
6 compounds in the belt package.
7 Q. Right. Okay. Not just the skim coat, skim
8 coat and other rubber compounds?
9 A. Sure.
10 Q. But the point is that the effect of the thermal
11 oxidative degradation, by making the skim coat and other
12 compounds more brittle or harder, is that it -- it makes
13 it more susceptible to a belt edge separation?
14 A. That's correct.
15 Q. All right. And it's your belief that, in fact,
16 this initiating separation, the -- the -- the one that
17 initiated this, as you call it, the -- the catastrophic
18 failure, that was, in part, because of thermal oxidative
19 degradation?
20 A. Yes.
21 Q. All right. With regard to the 21 years that
22 this tire had been from the date of its manufacture, do
23 you have any judgment of -- of how long it would take a
24 well-built tire to show these same signs of thermal
25 oxidative degradation or -- or is it something that you

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1 Q. You did not do it in this case?
2 A. No.
3 Q. Is there a reason why you did not do it in this
4 case?
5 A. I didn't think it was necessary. It wasn't
6 asked for it. I wasn't asked to do it.
7 Q. Your judgment is that -- or your belief was
8 that your subjective hands-on tactile and visual
9 inspection of the tire is sufficient?
10 A. Yes.
11 Q. Thermal oxidative degradation is a function of
12 the gauge of the inner liner as well as the -- the -- the
13 design in the compound within the inner liner?
14 A. That's --
15 Q. Is there -- is there more to it?
16 A. Well, there's -- there's the rate at which the
17 air permeates the inner liner, and that's a function of
18 the gauge and the compound of the liner.
19 Q. Okay.
20 A. And then there is the resistance of the skim
21 coat and other -- and wedge gum and other compounds to --
22 to resist oxidation.
23 Q. Okay.
24 A. So, you know, you could have a very poor liner
25 but very good resistance within the compounds to

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1 really can't answer because of all the host of different
2 variables?
3 A. It's dependent on a lot of different
4 variables --
5 Q. Okay.
6 A. -- yes.
7 Q. Can you point to any objective evidence of
8 thermal oxidative degradation in this tire?
9 A. If by "objective," you mean quantify with a
10 number, no. It's a -- it's a subjective assessment based
11 on years of experience.
12 Q. And -- and your personal touch?
13 A. Yes.
14 Q. Are there techniques that can be used to
15 measure thermal oxidative degradation?
16 A. Oh, certainly there are. I think I've
17 mentioned them in my report.
18 Q. Do you have the facilities or the technology
19 to -- to conduct those measurements?
20 A. Not personally. That's something that I
21 subcontract.
22 Q. Who do you subcontract with?
23 A. Well, I'd use the laboratory.
24 Q. Have you done that in the past?
25 A. I have.

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1 oxidation. Or you could have a -- a very, very high
2 quality liner and low antioxidant properties within the
3 skim coats. Both would be ways of ensuring the tire
4 wears out before it falls apart.
5 Q. All right. And I understand that you have
6 opinions critical of Goodyear with regard to this
7 design -- the design of this particular tire. I
8 understand that.
9 Would you agree, however, overall that
10 Goodyear has a good understanding and a good track record
11 of what it takes to design and manufacture tires of all
12 makes and models in order to prevent excessive thermal
13 oxidative degradation?
14 A. Well, I don't know what Goodyear knows. I
15 don't have an opinion about that.
16 Q. Well, based upon your experience and the tires
17 that they produce.
18 A. Well, they should have.
19 Q. Don't they? Yeah, they should.
20 And you don't have any reason to believe
21 that they don't, do you? Putting aside what you believe
22 about this tire. I know you say they --
23 A. Well, I can't put that aside.
24 Q. I know you say they missed it on this tire, but
25 overall isn't your experience that Goodyear knows how to